

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

EDWARD SMITH,

:

Petitioner(s),

:

Case Number: 1:07cv983

vs.

:

District Judge Susan J. Dlott

WARDEN, SOUTHERN OHIO
CORRECTIONAL FACILITY,

:

:

:

Respondent(s).

:

ORDER

This matter is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge Timothy S. Hogan. Pursuant to such reference, the Magistrate Judge reviewed the pleadings and filed with this Court on August 28, 2008 a Report and Recommendation (Doc. 10). Subsequently, the petitioner filed objections to such Report and Recommendation (Doc. 14) and a response to the objections was filed (Doc. 16).

The Court has reviewed the comprehensive findings of the Magistrate Judge and considered de novo all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that such Recommendation should be adopted.

Accordingly, respondent's motion to dismiss (Doc. 8) is **GRANTED**, and petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Doc. 1) is **DISMISSED** with prejudice.

Petitioner's motion for summary judgment (Doc. 5) is **DENIED**.

A certificate of appealability will not issue with respect to any order adopting this report

and Recommendation to dismiss the petition with prejudice because petitioner has not stated a “viable claim of the denial of a constitutional right”: or which is “adequate to deserve encouragement to proceed further.” *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983); *see also* 28 U.S.C. § 2253 (c); Fed. R. App. P. 22(b).

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of any Order adopting this Report and Recommendation will not be taken in “good faith” and, therefore **DENIES** petitioner leave to proceed on appeal *in forma pauperis* upon a showing of financial necessity. *See* Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997).

IT IS SO ORDERED.

— Susan J. Dlott —
Susan J. Dlott
United States District Judge